IN THE HIGH COURT OF BOMBAY AT GOA
MISC.CIVIL APPLICATION NO.450 OF 2002
IN
STAMP NUMBER (APPLN.) NO.1248 OF 2002

1. The Special Land Acquisition Officer (SIP), I.D. Complex, Gogol, Margao-Goa.

2. The Executive Engineer, Works Div. XIV, I.D., Gogol, Margao-Goa. .... Applicants

- Versus -

1. Jose Prazeres de Piedade Pinto r/o Old Market, Margao-Goa.

2. Alina Maria de Costa Pinto

3. Maria Francisca Margarde da Costa Govea Pinto, and her husband.

4. Rui de Govea Pinto (since deceased) represented by legal heirs:

(a) Mr. Renato Olinto Pinto and his wife

(b) Mrs. Maria Jose Rebelo Pinto,

(c) Mrs. Rita Maria Bhattacharya alias Vimla Rita Maria de Gouveia Pinto,

(d) Mr. Neville Rui de Gouveia Pinto

(e) Mr. Ricardo Mario de Gouveia Pinto and his wife

(f) Mrs. Fatima Maria de Gouveia Pinto

All r/o Dr. Custao Couto, 246, La Campala Housing Colony, Miramar.

5. Maria Telma de Costa Couto and her husband

6. Gustavo Filipe Couto

Nos.5 and 6 r/o Old Market,
Margao, Goa.

7. Maria Suzanan de Costa cunha,
since deceased, through LRs:

(a) Mr. Aleixo Floriano Antonio
Alfrado D'Cunha

(b) Mr. Leonel Arun da Cunha,

Nos.(a) and (b) r/o 101, Costa
Belle 687, Ferry Cross Road,
Bombay.

(c) Mr. Sunil Alfredo D'Cunha,
r/o Mr. Alfredo D'Cunha,
101, Costa Belle 687,
Ferry Cross Road, Bombay.

(d) Mr. Leela Christino D'Cunha
Deniz

(e) Agnelo Deniz

Nos.(d) and (e) r/o Dr. Custao
Couto, 246, La Campala Housing
Colony, Miramar.

8. Alfredo D'Cunha,
r/o Old Market, Margao,
Goa. .... Respondents

Shri Guru Shirodkar, Addl. Government Advocate,
for the Applicants.

Ms A.A. Agni for the Respondent Nos.1, 2, 3,
4(a) to (f) and 7(a) to (e) and 8.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: FEBRUARY 23, 2006

ORAL JUDGMENT:

1. Heard the learned Advocates for the applicants and

the respondent Nos.1 to 4 and 7 and 8. None present for the respondent Nos.5 and 6, though served.

2. This is an application for condonation of delay of 281 days in filing the first appeal against the award passed by the reference Court in a land acquisition case under Section 18 of the Land Acquisition Act, 1894, hereinafter called as "the said Act". The reference Court has enhanced the compensation from Rs.65/- to Rs.85 per sq.mtr., which was acquired pursuant to issuance of Notification under Section 4, dated 4-8-1987. The area acquired is from village Curchorem, admeasuring about 2740 sq.mtrs. of survey No.154/1 and the same has been acquired for the purpose of construction of a market complex at Curchorem.

3. When the application came up for hearing on 10-1-2006, since the application referred to the movement of the file concerning the appeal from one office to another, without giving the necessary particulars and the reasons for such movement and further reasons for delay for such movement, and taking into consideration the number of days the file was pending at different offices or tables, the applicants were required to file affidavits of the Chief Engineer as well as the Executive Engineer

giving those details. Accordingly, the Chief Engineer, Water Resource Department as well as the Executive Engineer, Works Division XIV, WRD, Gogal,

Margao-Goa have filed the affidavits.

4. The learned Advocate appearing for the applicants has submitted that the affidavits filed on behalf of the applicants disclose details about the movement of the file pertaining to the filing of the appeal and also disclose that the delay was caused on account of pendency of the file in different offices, either for the purpose of securing the necessary opinion of the concerned officer or for preparation of the financial implication report, besides that there was misplacement of the original certified copy of the impugned award and it was required to be obtained afresh in order to enable them to file the appeal. Considering the same, there being satisfactory explanation for the delay in filing the appeal, the learned Advocate for the applicants submitted that the appeal be ordered to be admitted, after condoning the delay.

5. On the other hand, the learned Advocate appearing for the respondents (except the respondent Nos.5 and 6) submitted that even after filing further affidavits

pursuant to the order dated 10-1-2006, the applicants have not been able to disclose satisfactory ground for the delay in filing the appeal, apart from the fact that the application for condonation of delay itself

was filed 51 days after filing of the appeal. There is no explanation for such delay in filing the said application. Besides, the affidavits filed by the officers apparently disclose that the applicants have absolutely no explanation for the period of two-and-half months from 15-11-2001 till the last week of January, 2002 and for about 120 days from 1-2-2002 till 3-6-2002. Being so, there is no case made out for condonation of delay. She has also submitted that the calculation was in respect of 2740 sq.mtrs. and the total amount involved is about Rs.54,000/-. She has also placed reliance in the decision of the Apex Court in the matter of **P.K. Ramachandran v. State of Kerala and another,** reported in AIR 1998 SC 2276.

6. The Order 41, Rule 3-A(1) of the Code of Civil Procedure, hereinafter called as "the C.P.C." provides that when an appeal is presented after the expiry of the period of limitation specified therefor, it shall be accompanied by an application supported by affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had

sufficient cause for not preferring the appeal within such period. Obviously, the Rule requires the appellant to file an application for condonation of delay along with the memo of the appeal which is presented in terms of Order 41, Rule 1 of the C.P.C..

The said Rule specifically uses the expression "accompanied by an application" in relation to an appeal presented after the expiry of the period of limitation. The provisions of law, therefore, are absolutely clear that the application for condonation of delay in filing the appeal has necessarily to be filed along with the memo of the appeal and not thereafter.

7. Undoubtedly, the provision of law comprised under Order 41, Rule 3-A relates to the procedure and being so, even though at times the appeal is not accompanied by the application for condonation of delay and such an application is filed subsequent to the filing of the appeal, that by itself would not be sufficient cause to reject such application. After all, the rules of procedure are made to enable the parties to assist the Court to arrive at a just decision on the controversy between the parties. Being so, merely because there is a delay of 51 days in filing the application for condonation of delay, that by itself

cannot be a justification to dismiss the application for condonation of delay. However, while exercising such discretion it would be necessary to see whether the applicant has disclosed sufficient cause for not filing such application along with the appeal and whether the delay in the filing of such an application

is for a sufficient cause.

8. Perusal of the records and particularly the memo of the appeal as well as the application for condonation of delay nowhere disclose as to what prevented the applicants from filing the application for condonation of delay along with the memo of the appeal. It is also pertinent to note that though there was a delay of 281 days in filing the appeal, the calculation of the delay was not properly done by the applicants. It was sought to be presented as if there was delay of 230 day. Undoubtedly, this difference in the number of days though may not be sufficient to consider the issue relating to sufficiency of the cause, it per se discloses total care-free attitude and failure to observe minimum required discipline by the concerned officer as well as duties towards the Court in rendering proper assistance to arrive at just and appropriate decision on the matter in issue and that too in a situation

where a party expects the Court to exercise its discretion in its favour on the basis of the materials placed before the Court.

9. Apart from failure on the part of the applicants to disclose the reason for non-filing of the application for condonation of delay along with the

memo of the appeal, perusal of the application and the affidavits filed on behalf of the applicants disclose a total casual approach on the part of the Government machinery in dealing with the matter pertaining to the filing of the appeal against the award passed by the reference Court. The narration in the application as well as in the affidavit filed by the Executive Engineer regarding the movement of the file which is disclosed to be the cause for the delay in filing the appeal indeed discloses period of about eight to nine months, without any explanation whatsoever. Firstly, there is no explanation for the period from 15-11-2001 till the last week of January, 2002 and secondly for the period from 1-2-2002 till 3-6-2002. Even otherwise, for the remaining period, apart from stating that the file was received in one office and then transmitted to another office either for the opinion or for preparation of financial implication report, no satisfactory explanation has been disclosed

for the number of delays during which the file had remained pending in one office or the other.

10. It is stated in the affidavit that the file was received in the office of the Executive Engineer on 23-10-2001 and it was forwarded thereafter to the office of the Chief Engineer along with the report regarding the financial implication. It is to be

noted that the file was received by the Executive Engineer on 23-10-2001 after being processed by he himself from 28-8-2001 onwards. Once the matter was processed from 28-8-2001 by the Executive Engineer for the purpose of filing of the appeal, it was to his knowledge that he was required to ascertain the financial implication for the purpose of filing of the appeal. It is also to his knowledge, and is apparent that the last date for filing of the appeal was 18-10-2001. In these circumstances, the file having been received by the Executive Engineer on 23-10-2001 to ascertain the financial implications, one fails to understand as to what prevented him from furnishing such information and such report immediately after 23-10-2001 and why he had to wait till 31-10-2001 for that purpose. It is undisputed fact that the acquired land admeasures 2740 sq.mtrs.. The compensation which was awarded by the Land Acquisition Officer was at the

rate of Rs.65/- which was enhanced to Rs.85/- per sq.mtr. by the reference Court. Obviously the financial implication was of Rs.20/- per sq.mtr., besides the interest amount. Once the processing of the appeal had commenced from 28-8-2001 for the purpose of filing of the appeal, nothing prevented the Executive Engineer from preparing the financial implication report along with such processing of the appeal, and it is not known why he had to wait till

31-10-2001 to submit such report. There is no explanation in that regard. It is not a matter which involves lakhs of rupees. It is also not the case of the applicants, in the application, that the impugned award will have wide repercussions in the sense that there are other pieces of land acquired under the same Notification and some other interested parties may try to take advantage of the impugned award by taking resort to Section 28-A of the said Act.

11. The paras 6 and 7 of the affidavit of the Executive Engineer disclose total absence of any justification for the delay of 120 days. The application or the affidavits do not disclose as to what action has been taken or what action is proposed to be taken against the persons responsible for the delay in filing the appeal.

12. The delay merely because it has occasioned in a matter relating to land acquisition case involving public money, condonation thereof cannot be construed as a matter of right to the Government. In case of delay, it is necessary for the Government machinery to furnish the necessary satisfactory explanation for such delay. In case the delay has occurred on account of either wilful acts on the part of the concerned officer/s or for any other reason, which could even

defeat the rights of the Government or the acquiring body in relation to the provision for appeal against the award passed by the reference Court, the mere statements regarding the movement of the file from one office to the other office, from one table to the other table cannot be construed as satisfactory explanation for the delay in filing the appeal. In the case in hand, as already observed above, merely stating that the file moved from one office to another, either for opinion or for preparation of financial report, no explanation has been placed on record as to why it took particular number of days for obtaining either the opinion of the Law Department or for preparing the financial implication report by the Executive Engineer. It apparently discloses total failure on the part of the applicants in explaining

the cause for the delay of 281 days in filing the appeal as well as 51 days' delay in filing the application for condonation of delay.

13. Perusal of the memo of the appeal also discloses that the main ground of challenge appears to be that an award passed in relation to the part of some property acquired under another Notification, the reference Court had awarded compensation at the rate of Rs.50/- per sq.mtr. for an area of 8050 sq.mtrs. situated in the same town. However, that was in an

award passed on 20-11-1987 whereas the present award is of 18-7-2001. Obviously, the reference Court's award dated 20-11-1987 is not in relation to the Notification under Section 4, issued in 1987, but in relation to the Notification issued many years prior to 1987. Another ground which is sought to be taken in the appeal appears to be that the reference Court had considered rise of ten percent per year for a period of six years from 1981. Without going to the merits of the case, it is settled law that even when two pieces of land adjoining to each other are acquired under the same Notification, both the parties may not be entitled to valuation at the same rate unless the similarity in the nature of the two pieces of land is established by the parties. Being so,

merely because the reference Court had awarded, in the year 1987 in relation to land acquired much prior to that, compensation at the rate of Rs.50/- or Rs.55/- per sq.mtr., that itself could hardly be a justification for interference in the reference Court's award in appeal. This is not to express any opinion as such on the validity of the award passed by the reference Court but reference is being made to this fact only to ascertain whether there would be any occasion to cause substantial loss as such to the Government in case of rejection of the application for condonation of delay. Obviously that will have to be

otherwise considered bearing in mind the fact that such matter involve burden on the public exchequer, though that by itself may not be a justification for condonation of delay.

14. The dismissal of this application, however, would not be the end of the matter. Considering the total casual approach on the part of the Government officers in pursuing with the matter, as revealed from the records, the Government is expected to take necessary steps and necessary action against the erring officer/s and the person/s responsible for the delay in filing the appeal and causing loss, if any, to the public exchequer. The Chief Secretary to the

Government of Goa, therefore, is expected to take into consideration these observations by this Court and initiate appropriate proceedings.

15. The respondents are also justified in bringing to my notice the decision of the Apex Court in the matter of **P.K. Ramachandran** (supra) wherein the Apex Court had held that the "Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribe and the Courts have no power to extend the period of limitation on equitable grounds.". In that case, there was a delay of 565 days in filing the appeal and

the explanation which was given on behalf of the applicant was that there were too many arbitration matters of some importance were pending for consideration in the office of the Advocate General and, therefore, there was delay in filing the appeal. Rejecting the said contention being not disclosing sufficient cause for the condonation of delay, the Apex Court had made the above quoted observations, which squarely apply to the matter in hand.

16. For the reasons stated above, the application is dismissed with costs of Rs.1000/-, which the applicants shall recover from the officer/s

responsible for the delay in filing the appeal.

(R.M.S.Khandeparkar,J.)

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